

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL A. LOCOCO,

Plaintiff,

v.

KAREN KROEGER, et al.,

Defendants.

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No. 4:15CV738 CEJ

MEMORANDUM AND ORDER

Plaintiff seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. The motion is granted.

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.”

Plaintiff brings this action against two attorneys employed by the Missouri Public Defender’s office who represented him in a pending criminal case. *Missouri v. Lococo*, No. 13L6-CR00728 (Lincoln County). He alleges that they mishandled evidence in that they lost some pictures he sent to them that would have been helpful to his defense.


“[A] public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). Here, it is evident that the defendants were acting as

plaintiff's attorneys at the time the pictures were sent to them. Maintaining files and evidence is a traditional function performed by attorneys in defending a criminal case. The Court finds that the complaint fails to state a claim and, therefore, it will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

Dated this 20th day of May, 2015.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE